The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WFS PHARMAGREEN, INC., Plaintiff, vs. CANNA-PET, LLC, and DANIEL K. GOLDFARB, Defendants DANIEL K. GOLDFARB and CANNA-PET, LLC, Counterclaim Plaintiffs, vs. WFS PHARMAGREEN, INC., Counterclaim Defendants DANIEL K. GOLDFARB and CANNA-PET, LLC, Third-Party Plaintiffs, vs. CANNA COMPANION, LLC; CANNA COMPANION PRODUCTS, INC.; and SARAH BANDON and GREG COPAS, wife and husband, and the marital community composed therein; and ROBERT STEWART and JANE DOE STEWART, husband and wife, and the marital community composed therein, Third-Party Defendants	No. 2:16-cv-00491-RSL ANSWER TO AMENDED COMPLAINT AND AMENDED COUNTERCLAIMS AND THIRD-PARTY CLAIMS JURY DEMAND

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Daniel K. Goldfarb and Canna-Pet, LLC, answer plaintiff's First Amended Complaint for Declaratory Judgment (Ct. Dkt. #33), and assert amended counterclaims and third-party claims as follows:

ANSWER TO AMENDED COMPLAINT

THE PARTIES

1. Answering the allegations contained in Paragraph 1 of the amended complaint, Mr. Goldfarb and Canna-Pet admit that WFS is a Canada corporation. Mr. Goldfarb and Canna-Pet lack sufficient knowledge of the truth or falsity of the remaining allegations and, therefore, deny them.

2. Mr. Goldfarb and Canna-Pet admit that Canna-Pet is a limited liability company organized under the laws of the State of Washington with its principal place of business in King County Washington. Mr. Goldfarb and Canna-Pet deny the remaining allegations contained in Paragraph 2 of the amended complaint.

3. Mr. Goldfarb and Canna-Pet admit that Mr. Goldfarb is a Washington resident residing in King County, Washington. They also admit that Mr. Goldfarb is the sole member of Canna-Pet.

VENUE AND JURISDICTION

4. Mr. Goldfarb and Canna-Pet admit that jurisdiction is proper.

5. Mr. Goldfarb and Canna-Pet admit that venue is proper.

6. Mr. Goldfarb and Canna-Pet admit the allegations in the first sentence of paragraph 6 of the amended complaint. They deny the allegations in the second sentence.

BACKGROUND

7. Mr. Goldfarb and Canna-Pet admit the allegations contained in Paragraph 7 of the amended complaint.

8. Mr. Goldfarb and Canna-Pet admit the allegations contained in Paragraph 8 of the

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amended complaint.

9. Mr. Goldfarb and Canna-Pet admit the allegations contained in Paragraph 9 of the amended complaint.

10. Mr. Goldfarb and Canna-Pet admit the allegations contained in Paragraph 10 of the amended complaint.

11. Answering the allegations contained in Paragraph 11 of the amended complaint, Mr. Goldfarb and Canna-Pet admit the allegations contained in the first sentence. They deny the remaining allegations.

12. Mr. Goldfarb and Canna-Pet lack sufficient knowledge of the truth or falsity of the allegations contained in Paragraph 12 of the amended complaint and, therefore, deny the same.

SUMMARY OF THE DISPUTE AND ALLEGATIONS

1. Trademark Infringement

13. Mr. Goldfarb and Canna-Pet restate their allegations set forth in Paragraphs 1-12 above.

14. Answering the allegations contained in Paragraph 14 of the amended complaint, Mr. Goldfarb and Canna-Pet admit they have asserted their valid federal trademark rights. They deny the remaining allegations.

15. Mr. Goldfarb and Canna-Pet deny the allegations contained in Paragraph 15 of the amended complaint.

16. Mr. Goldfarb and Canna-Pet deny the allegations contained in Paragraph 16 of the amended complaint.

17. Mr. Goldfarb and Canna-Pet deny the allegations contained in Paragraph 17 of the amended complaint.

18. Mr. Goldfarb and Canna-Pet deny the allegations contained in Paragraph 18 of the amended complaint.

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19. Mr. Goldfarb and Canna-Pet deny the allegations contained in Paragraph 19 of the amended complaint.

AFFIRMATIVE DEFENSES

1. The amended complaint fails to state a claim for which relief can be granted.

2. Plaintiff's claims are barred by a lack of standing.

AMENDED COUNTERCLAIMS

PARTIES

1. Counterclaim Plaintiff Daniel K. Goldfarb is a Washington resident residing in Seattle. Mr. Goldfarb is the sole member of Canna-Pet, LLC.

2. Counterclaim Plaintiff Canna-Pet, LLC, is a limited liability company organized under the laws of the State of Washington. Its principal place of business is located in Seattle.

3. Counterclaim Defendant WFS Pharmagreen, Inc., is a corporation organized under the laws of Canada. Its principal place of business is located in Vancouver, British Columbia. On information and belief, WFS Pharmagreen licenses the CANNA CAMPANION trademark from Third-Party Defendant Canna Companion, LLC, or Third-Party Defendant Canna Companion Products, Incorporated. WFS Pharmagreen is a direct competitor of Mr. Goldfarb and Canna-Pet.

VENUE AND JURISDICTION

4. This action arises under the Lanham Act, 15 U.S.C. §§ 1051, *et seq*. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), 15 U.S.C. § 1121, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

5. This Court has personal jurisdiction over WFS Pharmagreen because it engages in a continuous and systematic course of doing business in Washington and has substantial contacts with, transacts and solicits business in, and has purposefully availed itself of the privileges and benefits of doing business in the State of Washington. In particular, WFS Pharmagreen advertises, markets, distributes, and sells goods that infringe Canna-Pet's trademark throughout Washington.

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6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because WFS Pharamagreen resides in, conducts business in, and has substantial contacts with, and/or may be found in the Western District of Washington; a substantial portion of the events at issue have arisen and will arise in this judicial district; and because WFS Pharmagreen is subject to personal jurisdiction within this judicial district.

FACTS

7. At least as early as September 23, 2013, Daniel Goldfarb (and, later, Canna-Pet) began using CANNA-PET as a trademark in advertising, marketing, distributing, and selling dietary supplements for pets. Their dietary supplements are of high quality, and typically sell online and through veterinarians and pet retailers for a variety prices depending on the product. For example, a bottle of 30 capsules for small dogs costs $29.99 and a bottle of 60 capsules for large dogs costs $64.99. To date, Mr. Goldfarb and Canna-Pet have sold more than 50,000 units of product, totaling more than one million individual capsules.

8. On January 20, 2014, Mr. Goldfarb applied to register his CANNA-PET trademark (Serial No. 86170093) with the U.S. Patent and Trademark Office (PTO) in International Class 005 for "Dietary pet supplements in the form of pet treats; Dietary supplements for pets; Dietary supplements for pets in the nature of a powdered drink mix." Mr. Goldfarb based his application on existing use of his trademark in interstate commerce with a first-use date at least as early as October 1, 2013.

9. On February 10, 2014, WFS Pharmagreen's licensor, Canna Companion, applied to register the CANNA COMPANION trademark (Serial No. 86189641) in Class 005 for "capsules containing medicinal hemp for administration to dogs and cats." Though Canna Companion initially (and erroneously) filed its application without stating a filing basis, it later clarified it based its filing on the existing use of its trademark in interstate commerce with a claimed first-use date of February 10, 2014. Still later, Canna Companion corrected that statement

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a second time to claim a first-use date of March 14, 2014.

10. In May 2014, WFS Pharmagreen contacted Mr. Goldfarb to discuss distributing and marketing Canna-Pet products in Canada and internationally. The parties engaged in discussions, but Mr. Goldfarb ended talks when he learned that WFS Pharmagreen had secretly formed a Canadian company with his “Canna-Pet” name without his knowledge or consent.

11. In September 2014, Mr. Goldfarb learned of Canna Companion’s competing use of its CANNA COMPANION trademark. Like Mr. Goldfarb’s pet supplements, Canna Companion typically sells its pet supplements online and through veterinarians for a variety prices depending on the product. For example, a bottle of 30 capsules for small dogs costs $34.99 and a bottle of 60 capsules for large dogs costs $74.95.

12. Around the same time, Mr. Goldfarb began to receive complaints from consumers who mistakenly associated Canna Companion’s pet supplements sold under its CANNA COMPANION trademark with Mr. Goldfarb’s pet supplements sold under his CANNA-PET trademark.

13. On September 17, 2014, Mr. Goldfarb objected to Canna Companion’s confusingly similar trademark use. Canna Companion (through attorneys it apparently shares with WFS Pharmagreen) acknowledged receipt of the letter, but did not substantively respond.

14. Thereafter, Mr. Goldfarb learned that WFS Pharmagreen had begun to sell CANNA COMPANION-branded pet supplements in the same fashion as Canna Companion.

15. On March 24, 2015, the PTO granted Mr. Goldfarb’s application and issued him a federal trademark registration to for his CANNA-PET trademark (Reg. No. 4,706,460) in International Class 005 for “Dietary pet supplements in the form of pet treats; Dietary supplements for pets; Dietary supplements for pets in the nature of a powdered drink mix.” In doing so, the PTO determined that CANNA-PET is inherently distinctive as a trademark in connection with those goods.

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16. On May 13, 2015, Mr. Goldfarb assigned all right, title, and interest in his CANNA-PET trademark, including his registration and all associated goodwill, to Canna-Pet, *nunc pro tunc*, effective on March 24, 2015, the date he filed his application for federal trademark registration. He duly recorded a copy of the assignment with the PTO.

17. Thus, Mr. Goldfarb owned, used, and was injured by infringement of the CANNA-PET trademark at all material times before his assignment became effective, and Canna-Pet owned, used, and was injured by infringement of the mark at all material times thereafter.

18. Prior to May 1, 2016, Canna-Pet engaged Nutra Connection of Spanish Fork, Utah, to supply services to Canna-Pet.

19. On or about May 9, 2016, WFS Pharmagreen, through Greg Copas, sent a letter to Nutra Connection via email and US mail.

20. In the May 9, 2016, letter, WFS Pharamgreen claimed to be a "Dr. Williams." WFS Pharmagreen alleged in the letter that Canna-Pet products are illegal to send via US mail and that Canna-Pet products are controlled substances under the Controlled Substances Act. WFS Pharmagreen also alleged in the letter that they had tried to contact Mr. Goldfarb related to the substance of the letter and had not received a response. These allegations are false.

21. With the letter, WFS Pharmagreen included three fabricated lab reports purporting to be from Confidence Analytics, a company providing cannabis analytics services, and purporting to show that Canna-Pet's products were controlled substances.

CLAIMS

Count 1 – Infringement of a Registered Trademark

22. Mr. Goldfarb and Canna-Pet restate their allegations set forth in Paragraphs 1-21 above.

23. CANNA-PET is a valid, enforceable, and registered trademark.

24. Mr. Goldfarb's and Canna-Pet's rights in and to CANNA-PET are prior and

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superior to WFS Pharmagreen's rights in and to CANNA COMPANION.

25. As a registrant on the Principal Register, Mr. Goldfarb and Canna-Pet are entitled to the legal presumption under 15 U.S.C. § 1057(b) that they are the exclusive nationwide user of CANNA-PET in connection with "Dietary pet supplements in the form of pet treats; Dietary supplements for pets; Dietary supplements for pets in the nature of a powdered drink mix."

26. WFS Pharmagreen's unauthorized use of CANNA COMPANION in commerce in connection with substantially identical goods is likely to cause confusion, mistake, or deception with the goods sold by Mr. Goldfarb and Canna-Pet. The likelihood of these harms is heightened by the facts that WFS Pharmagreen charges approximately the same amount for its products, targets the same class of consumers, and sells its products through the same means that Mr. Goldfarb and Canna-Pet sell their competing products. The likelihood that WFS Pharmagreen has caused these harms is borne out by the actual consumer confusion that has already occurred in the marketplace.

27. Such likelihood of confusion, mistake, or deception infringes Mr. Goldfarb's and Canna-Pet's superior trademark rights in CANNA-PET in violation of 15 U.S.C. § 1114(1).

28. Mr. Goldfarb and Canna-Pet have been and will continue to be damaged by such likelihood of confusion, mistake, or deception in a manner that cannot be measured or compensated in economic terms. WFS Pharmagreen's actions have damaged and will continue to damage Mr. Goldfarb's and Canna-Pet's market share, reputation, and goodwill. Such irreparable harm will continue unless WFS Pharmagreen's acts are restrained or enjoined under 15 U.S.C. § 1116(a).

29. WFS Pharmagreen's acts also have damaged Mr. Goldfarb and Canna-Pet in an amount to be proven at trial.

30. WFS Pharmagreen's trademark infringement has been intentional. As such, the harm it has caused Mr. Goldfarb and Canna-Pet has been intentional.

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Count 2 – False Designation of Origin

31. Mr. Goldfarb and Canna-Pet restate their allegations set forth in Paragraphs 1-30 above.

32. WFS Pharmagreen's unauthorized use of a trademark that copies or mimics distinctive elements of Mr. Goldfarb's and Canna Pet's trademark in connection with substantially identical goods constitutes a false designation of origin, false or misleading description, and false and misleading representation. Such unauthorized use is likely to cause confusion, mistake or deception of others as to the affiliation, connection or association of Mr. Goldfarb's and Canna-Pet's pet supplements and, and is likely to cause confusion, mistake or deception as to the origin, sponsorship or approval of the pet supplements that WFS Pharmagreen sells.

33. WFS Pharmagreen's false designations, descriptions and/or representations constitute unfair competition and infringe Mr. Goldfarb's and Canna-Pet's rights in their trademark in violation of 15 U.S.C. § 1125(a).

34. Mr. Goldfarb and Canna-Pet have been and will continue to be damaged by such false descriptions, false representations, and false designations of origin in a manner that cannot be measured or compensated in economic terms. WFS Pharmagreen's actions have damaged and will continue to damage Mr. Goldfarb's and Canna-Pet's market, reputation, and goodwill. Such irreparable harm will continue unless WFS Pharmagreen's acts are restrained or enjoined.

35. WFS Pharmagreen's acts also have damaged Mr. Goldfarb and Canna-Pet in an amount to be proven at trial.

36. WFS Pharmagreen's false designation of origin has been intentional. As such, the harm it has caused Mr. Goldfarb and Canna-Pet has been intentional.

Count 3 – Unfair Competition under Washington Law

37. Mr. Goldfarb and Canna-Pet restate their allegations set forth in Paragraphs 1-36 above.

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38. WFS Pharmagreen's unauthorized use of trademarks that copy identical or confusingly similar elements of Mr. Goldfarb's and Canna-Pet's trademark in connection with the same goods causes a likelihood of consumer confusion and constitutes an unfair method of competition and an unfair trade practice. As such, it is damaging to the public interest in violation of the Washington Consumer Protection/Unfair Business Practices Act, RCW 19.86.020.

39. WFS Pharmagreen's unfair methods of competition occur in trade or commerce and cause injury to Mr. Goldfarb's and Canna-Pet's business, including the loss of sales, customers, and goodwill.

40. As a result of WFS Pharmagreen's unfair business practices, Mr. Goldfarb and Canna-Pet have been damaged in an amount to be proven at trial, and will be irreparably harmed if WFS Pharmagreen's wrongful conduct is allowed to proceed.

41. Pursuant to RCW 19.86.090, Mr. Goldfarb and Canna-Pet are entitled to their actual damages, an injunction restraining WFS Pharmagreen's unfair competition, their attorney's fees, and exemplary damages.

Count 4 – Unfair Competition under Washington Law

42. Mr. Goldfarb and Canna-Pet restate their allegations set forth in Paragraphs 1-41 above.

43. WFS Pharmagreen's fraudulent and deceptive letter sent to Nutra Connection with the intent to interfere with Canna-Pet's commerce with Nutra Connection constitutes an unfair method of competition and an unfair trade practice. As such, it is damaging to the public interest in violation of the Washington Consumer Protection/Unfair Business Practices Act, RCW 19.86.020.

44. The unfair methods of competition employed by WFS Pharmagreen occur in trade or commerce and cause injury to Mr. Goldfarb's and Canna-Pet's business, including the loss of goodwill.

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45. As a result of the unfair business practices employed by WFS Pharmagreen, Mr. Goldfarb and Canna-Pet have been damaged in an amount to be proven at trial, and will be irreparably harmed if the wrongful conduct is allowed to proceed.

46. Pursuant to RCW 19.86.090, Mr. Goldfarb and Canna-Pet are entitled to their attorney's fees, exemplary damages, and an injunction restraining the unfair competition.

Count 5 – Libel

47. Mr. Goldfarb and Canna-Pet restate their allegations set forth in Paragraphs 1-46 above.

48. WFS Pharmagreen, through Greg Copas, sent a letter to third party Nutra Connection.

49. The letter to Nutra Connection contained false statements concerning Mr. Goldfarb, Canna-Pet, and Canna-Pet's products. The letter falsely alleged that Canna-Pet's products are illegal, that the letter's author had contacted Mr. Goldfarb and he had failed to respond, and that the author enclosed "verified certificates of analysis" of Canna-Pet's products.

50. WFS Pharmagreen sent the letter to Nutra Connection with the intent to damage Mr. Goldfarb and Canna-Pet's reputations, including Mr. Goldfarb and Canna-Pet's reputations for lawful conduct in their trade, business, and profession.

51. WFS Pharmagreen's intent in sending the letter including false statements was malicious rather than negligent.

52. As a result of these false statements, Mr. Goldfarb and Canna-Pet have been damaged in an amount to be proven at trial, and will be irreparably harmed if the wrongful conduct of WFS Pharmagreen is allowed to proceed.

53. Mr. Goldfarb and Canna-Pet are entitled to an injunction restraining WFS Pharmagreen Defendants' libelous actions, their attorney's fees, and exemplary damages.

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Count 6 – Civil Conspiracy

54. Upon information and belief, WFS Pharmagreen and the Third-Party Defendants agreed with one another to engage in the acts alleged in Counts 4 and 5 in violation of state statutory and common law. That agreement to accomplish an unlawful objective is a conspiracy. Mr. Goldfarb and Canna-Pet have suffered and will suffer actual damage as a result of WFS Pharmagreen's conspiracy. As such, WFS Pharmagreen is jointly and separately liable for the harm it jointly and severally caused.

AMENDED THIRD-PARTY COMPLAINT

PARTIES

1. Third-Party Plaintiff Daniel K. Goldfarb is a Washington resident residing in Seattle. Mr. Goldfarb is the sole member of Canna-Pet, LLC.

2. Third-Party Plaintiff Canna-Pet, LLC, is a limited liability company organized under the laws of the State of Washington. Its principal place of business is located in Seattle.

3. Third-Party Defendant Canna Companion, LLC ("Canna Companion"), is a limited liability company organized under the laws of the State of Washington. Its principal place of business is located in Mill Creek, Washington. It is a direct competitor of Mr. Goldfarb and Canna-Pet.

4. Third-Party Defendant Canna Companion Products, Incorporated ("CC Products"), is a corporation organized under the laws of the State of Washington. Its principal place of business is located in Seattle. On information and belief, CC Products licenses the CANNA CAMPANION trademark from Canna Companion. It is a direct competitor of Mr. Goldfarb and Canna-Pet.

5. Third-Party Defendants Sarah Brandon and Greg Copas are married persons. They are Washington residents residing in Sultan, Washington. Both Ms. Brandon and Mr. Copas served as contractors for Mr. Goldfarb's business. Ms. Brandon and Mr. Copas produced materials

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for testing, but did not produce commercial products. After their work with Mr. Goldfarb ended, they formed Third-Party Defendants Canna Companion and CC Products, which they both own and control. On information and belief, Ms. Brandon and Mr. Copas personally directed Canna Companion and CC Products or otherwise participated in their decision to manufacture, market, and sell the CANNA COMPANION-branded products they knew infringed Mr. Goldfarb's and Canna-Pet's rights in its CANNA-PET trademark as discussed below. Their personal involvement in causing their companies to infringe Mr. Goldfarb's and Canna-Pet's trademark rights and otherwise engage in the wrongful acts described below makes them directly liable for such infringement and acts, as well as contributorily and vicariously liable. All actions alleged herein were undertaken for the benefit of their marital community.

6. Third-Party Defendant Robert Stewart and Jane Doe Stewart are married persons residing in Vancouver, British Columbia. Mr. Stewart owns and controls Plaintiff/Counterclaim Defendant WFS Pharmagreen, Inc. On information and belief, Mr. Stewart personally directed WFS Pharmagreen or otherwise participated in its decision to manufacture, market, and sell the CANNA COMPANION-branded products he knew infringed Mr. Goldfarb's and Canna-Pet's rights in its CANNA-PET trademark as discussed below. His personal involvement in causing his company to infringe Mr. Goldfarb's and Canna-Pet's trademark rights and otherwise engage in the wrongful acts described below makes him directly liable for such infringement and acts, as well as contributorily and vicariously liable. All actions alleged herein were undertaken for the benefit of Mr. and Mrs. Stewart's marital community.

7. Each of the individual third-party defendants are collectively referred to herein as the "Third-Party Defendants." The acts undertaken by each of the Third-Party Defendants were undertaken individually, were actions that each of them caused to occur, were actions that each of them authorized, controlled, directed, or had the ability to authorize, control, or direct, and/or were actions each of the Third-Party Defendants assisted, participated in, or otherwise encouraged, and

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are actions for which each of the Third Party Defendants is liable. Each also was the agent of the other Third-Party Defendants, and in doing the things hereinafter alleged, each was acting within the course and scope of such agency and with the permission and consent of the others.

VENUE AND JURISDICTION

8. This action arises under the Lanham Act, 15 U.S.C. §§ 1051, *et seq*. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), 15 U.S.C. § 1121, and supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

9. This Court has personal jurisdiction over the Third-Party Defendants because they engage in a continuous and systematic course of doing business in Washington, and/or have substantial contacts with, transact and solicit business in, and/or have purposefully availed themselves of the privileges and benefits of doing business in the State of Washington. In particular, the Third-Party Defendants reside in Washington or advertise, market, distribute, and sell goods that infringe Canna-Pet's trademark throughout Washington.

10. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) because the Third-Party Defendants reside in, conduct business in, have substantial contacts with, and/or may be found in the Western District of Washington; a substantial portion of the events at issue have arisen and will arise in this judicial district; and because the Third-Party Defendants are subject to personal jurisdiction within this judicial district.

FACTS

11. At least as early as September 23, 2013, Daniel Goldfarb (and, later, Canna-Pet) began using CANNA-PET as a trademark in advertising, marketing, distributing, and selling dietary supplements for pets. Their dietary supplements are of high quality, and typically sell online and through veterinarians and pet retailers for a variety prices depending on the product. For example, a bottle of 30 capsules for small dogs costs $29.99 and a bottle of 60 capsules for large dogs costs $64.99. To date, Mr. Goldfarb and Canna-Pet have sold more than 50,000 units

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of product, totaling more than one million individual capsules.

12. On January 20, 2014, Mr. Goldfarb applied to register his CANNA-PET trademark (Serial No. 86170093) with the U.S. Patent and Trademark Office (PTO) in International Class 005 for "Dietary pet supplements in the form of pet treats; Dietary supplements for pets; Dietary supplements for pets in the nature of a powdered drink mix." Mr. Goldfarb based his application on existing use of his trademark in interstate commerce with a first-use date at least as early as October 1, 2013.

13. On February 5, 2014, Ms. Brandon registered *cannaforpets.com* as a domain name.

14. On February 10, 2014, Canna Companion applied to register the CANNA COMPANION trademark (Serial No. 86189641) in Class 005 for "capsules containing medicinal hemp for administration to dogs and cats." Though Canna Companion initially (and erroneously) filed its application without stating a filing basis, it later clarified it based its filing on the existing use of its trademark in interstate commerce with a claimed first-use date of February 10, 2014. Still later, Canna Companion corrected that statement a second time to claim a first-use date of March 14, 2014.

15. Since that time, both Canna Companion and CC Products have used and continue to use the CANNA COMPANION trademark in advertising, marketing, distributing, and selling dietary supplements for pets that compete with the pet supplements that Mr. Goldfarb and Canna-Pet sell under their CANNA-PET trademark.

16. In May 2014, WFS Pharmagreen contacted Mr. Goldfarb to discuss distributing and marketing Canna-Pet products in Canada and internationally. The parties engaged in discussions, but Mr. Goldfarb ended talks when he learned that WFS Pharmagreen had secretly formed a Canadian company with his "Canna-Pet" name without his knowledge or consent. Mr. Stewart then caused WFS Pharmagreen to license and use the CANNA COMPANION trademark in connection with substantially the same goods that Mr. Goldfarb and Canna-Pet sell in

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connection with their CANNA-PET trademark.

17. In September 2014, Mr. Goldfarb learned of Canna Companion's competing use of its CANNA COMPANION trademark. Like Mr. Goldfarb's pet supplements, Canna Companion typically sell their pet supplements online and through veterinarians for a variety prices depending on the product. For example, a bottle of 30 capsules for small dogs costs $34.99 and a bottle of 60 capsules for large dogs costs $74.95. (WFS Pharmagreen and CC Products typically charge the same amount.)

18. Around the same time, Mr. Goldfarb began to receive complaints from consumers who mistakenly associated Canna Companion's pet supplements sold under its CANNA COMPANION trademark with Mr. Goldfarb's pet supplements sold under his CANNA-PET trademark.

19. On September 17, 2014, Mr. Goldfarb objected to Canna Companion's confusingly similar trademark use. Canna Companion acknowledged receipt of the letter, but did not substantively respond.

20. On March 24, 2015, the PTO granted Mr. Goldfarb's application and issued him a federal trademark registration to for his CANNA-PET trademark (Reg. No. 4,706,460) in International Class 005 for "Dietary pet supplements in the form of pet treats; Dietary supplements for pets; Dietary supplements for pets in the nature of a powdered drink mix." In doing so, the PTO determined that CANNA-PET is inherently distinctive as a trademark in connection with those goods.

21. That same day, Canna-Pet commenced a proceeding with the U.S. Trademark Trial and Appeal Board (TTAB) opposing Canna Companion's application to register CANNA COMPANION as a trademark (Opposition No. 91221217) based a likelihood of confusion with Canna-Pet's prior and superior rights in its CANNA-PET trademark.

22. On April 7, 2015, Canna Companion commenced a proceeding with the TTAB

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seeking to cancel Canna-Pet's registration for CANNA-PET as a trademark (Cancellation No. 92061232) based on a likelihood of confusion with Canna Companion's claimed prior rights in its CANNA COMPANION trademark.

23. On May 13, 2015, Mr. Goldfarb assigned all right, title, and interest in his CANNA-PET trademark, including his registration and all associated goodwill, to Canna-Pet, *nunc pro tunc*, effective on March 24, 2015, the date he filed his application for federal trademark registration. He duly recorded a copy of the assignment with the PTO.

24. Thus, Mr. Goldfarb owned, used, and was injured by infringement of the CANNA-PET trademark at all material times before his assignment became effective, and Canna-Pet owned, used, and was injured by infringement of the mark at all material times thereafter.

25. On August 4, 2015, the TTAB ordered the parties' proceedings to be consolidated.

26. Canna-Pet and Canna Companion litigated their dispute before the TTAB through April 15, 2016. On that date, the parties stipulated to suspend the consolidated TTAB proceedings pending disposition of the instant lawsuit. In response, the TTAB suspended the parties' proceedings.

27. Prior to May 1, 2016, Canna-Pet engaged Nutra Connection of Spanish Fork, Utah, to supply services to Canna-Pet.

28. On or about May 9, 2016, one or more of the Third-Party Defendants, including Greg Copas, sent a letter to Nutra Connection via email and US mail.

29. In the May 9, 2016, letter, Third Party Defendants claimed to be a "Dr. Williams." The Third-Party Defendants alleged in the letter that Canna-Pet products are illegal to send via US mail and that Canna-Pet products are controlled substances under the Controlled Substances Act. WFS Pharmagreen and the Third-Party Defendants also alleged in the letter that they had tried to contact Mr. Goldfarb related to the substance of the letter and had not received a response. These allegations are false.

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30. With the letter, Third-Party Defendants included three fabricated lab reports purporting to be from Confidence Analytics, a company providing cannabis analytics services, and purporting to show that Canna-Pet's products were controlled substances.

CLAIMS

Count 1 – Infringement of a Registered Trademark (Against All Third-Party Defendants)

31. Mr. Goldfarb and Canna-Pet restate their allegations set forth in Paragraphs 1-30 above.

32. CANNA-PET is a valid, enforceable, and registered trademark.

33. Mr. Goldfarb's and Canna-Pet's rights in and to CANNA-PET are prior and superior to the Third-Party Defendants' rights in and to CANNA COMPANION.

34. As a registrant on the Principal Register, Mr. Goldfarb and Canna-Pet are entitled to the legal presumption under 15 U.S.C. § 1057(b) that they are the exclusive nationwide user of CANNA-PET in connection with "Dietary pet supplements in the form of pet treats; Dietary supplements for pets; Dietary supplements for pets in the nature of a powdered drink mix."

35. The Third-Party Defendants' unauthorized use of CANNA COMPANION in commerce in connection with substantially identical goods is likely to cause confusion, mistake, or deception with the goods sold by Mr. Goldfarb and Canna-Pet. The likelihood of these harms is heightened by the facts that Ms. Brandon and Mr. Copas are associated with Mr. Goldfarb and Canna-Pet because they worked with Mr. Goldfarb as contractors; the Third-Party Defendants charge approximately the same amount for their products as Mr. Goldfarb and Canna-Pet; they target the same class of consumers; and they sell their products through the same means that Mr. Goldfarb and Canna-Pet sell their products. The likelihood that Third-Party Defendants have caused these harms is borne out by the actual consumer confusion that has already occurred in the marketplace.

36. Such likelihood of confusion, mistake, or deception infringes Mr. Goldfarb's and

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Canna-Pet's superior trademark rights in CANNA-PET in violation of 15 U.S.C. § 1114(1).

37. Mr. Goldfarb and Canna-Pet have been and will continue to be damaged by such likelihood of confusion, mistake, or deception in a manner that cannot be measured or compensated in economic terms. The Third-Party Defendants' actions have damaged and will continue to damage Mr. Goldfarb's and Canna-Pet's market share, reputation, and goodwill. Such irreparable harm will continue unless the Third-Party Defendants' acts are restrained or enjoined under 15 U.S.C. § 1116(a).

38. The Third-Party Defendants' acts also have damaged Mr. Goldfarb and Canna-Pet in an amount to be proven at trial.

39. The Third-Party Defendants' trademark infringement has been intentional. As such, the harm they have caused Mr. Goldfarb and Canna-Pet has been intentional.

Count 2 – False Designation of Origin
(Against All Third-Party Defendants)

40. Mr. Goldfarb and Canna-Pet restate their allegations set forth in Paragraphs 1-39 above.

41. The Third-Party Defendants' unauthorized use of a trademark that copies or mimics distinctive elements of Mr. Goldfarb's and Canna Pet's trademark in connection with substantially identical goods constitutes a false designation of origin, false or misleading description, and/or false and misleading representation. Such unauthorized use is likely to cause confusion, mistake or deception of others as to the affiliation, connection or association of Mr. Goldfarb's and Canna-Pet's pet supplements and, and is likely to cause confusion, mistake or deception as to the origin, sponsorship or approval of the pet supplements that the Third-Party Defendants sell.

42. The Third-Party Defendants' false designations, descriptions and/or representations constitute unfair competition and infringe Mr. Goldfarb's and Canna-Pet's rights in their trademark in violation of 15 U.S.C. § 1125(a).

43. Mr. Goldfarb and Canna-Pet have been and will continue to be damaged by such

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false descriptions, false representations, and false designations of origin in a manner that cannot be measured or compensated in economic terms. The Third-Party Defendants' actions have damaged and will continue to damage Mr. Goldfarb's and Canna-Pet's market, reputation, and goodwill. Such irreparable harm will continue unless the Third-Party Defendants' acts are restrained or enjoined.

44. The Third-Party Defendants' acts also have damaged Mr. Goldfarb and Canna-Pet in an amount to be proven at trial.

45. The Third-Party Defendants' false designation of origin has been intentional. As such, the harm they have caused Mr. Goldfarb and Canna-Pet has been intentional.

Count 3 – Unfair Competition under Washington Law
(Against All Third-Party Defendants)

46. Mr. Goldfarb and Canna-Pet restate their allegations set forth in Paragraphs 1-45 above.

47. The Third-Party Defendants' unauthorized use of trademarks that copy identical or confusingly similar elements of Mr. Goldfarb's and Canna-Pet's trademark in connection with the same goods causes a likelihood of consumer confusion and constitutes an unfair method of competition and an unfair trade practice. As such, it is damaging to the public interest in violation of the Washington Consumer Protection/Unfair Business Practices Act, RCW 19.86.020.

48. The Third-Party Defendants' unfair methods of competition occur in trade or commerce and cause injury to Mr. Goldfarb's and Canna-Pet's business, including the loss of goodwill.

49. As a result of the Third-Party Defendants' unfair business practices, Mr. Goldfarb and Canna-Pet have been damaged in an amount to be proven at trial, and will be irreparably harmed if the Third-Party Defendants' wrongful conduct is allowed to proceed.

50. Pursuant to RCW 19.86.090, Mr. Goldfarb and Canna-Pet are entitled to their actual damages, an injunction restraining the Third-Party Defendants' unfair competition, their attorney's

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fees, and exemplary damages.

Count 4 – Determination of Right to Registration
(Against Canna Companion)

51. Mr. Goldfarb and Canna-Pet restate their allegations set forth in Paragraphs 1-50 above.

52. Canna Companion's CANNA COMPANION trademark is likely to cause confusion with Canna-Pet's CANNA-PET trademark, as Canna-Pet has alleged in the parties' TTAB proceedings.

53. Given this conflict, Canna-Pet's superior rights in its CANNA-PET trademark should be given priority over Canna Companion's inferior trademark rights.

54. Under 15 U.S.C. § 1119, the Court should determine that Canna-Pet has the right to continue to register its CANNA-PET trademark (Reg. No. 4706460) and, therefore, Canna Companion's claims in Cancellation No. 92061232 should be dismissed.

55. Under 15 U.S.C. § 1119, the Court should determine that Canna Companion has no right to register its CANNA COMPANION trademark (Serial No. 86189641) and, therefore, Canna-Pet's claims in Opposition No. 91221217 should be sustained.

56. In the event the Court determines that Mr. Goldfarb (rather than Canna-Pet) is the true owner of the CANNA-Pet trademark (as Canna Companion has alleged in the parties' TTAB proceedings), it should order the register be rectified to reflect that determination.

Count 5 – Violation of Anticybersquatting Consumer Protection Act
(Against Ms. Brandon)

57. Mr. Goldfarb and Canna-Pet restate their allegations set forth in Paragraphs 1-56 above.

58. In registering the *cannaforpets.com* domain name, Ms. Brandon acted with a bad faith intent to profit from using a distinctive element of Mr. Goldfarb's and Canna-Pet's CANNA-PET trademark. Mr. Goldfarb's and Canna-Pet's trademark was distinctive at the time she

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registered her domain name. The *cannaforpets.com* domain name is identical or confusingly similar to Mr. Goldfarb's and Canna-Pet's CANNA-PET trademark.

59. Ms. Brandon did not have any intellectual property rights in the *cannaforpets.com* domain name at the time she registered it.

60. Ms. Brandon's *cannaforpets.com* domain name does not consist of her legal name or any other name that is commonly used to identify her.

61. In registering the *cannaforpets.com* domain name, Ms. Brandon intended to divert consumers from Mr. Goldfarb's and Canna-Pet's online location at *www.canna-pet.com* to a site accessible under her domain name that could harm the goodwill represented by Mr. Goldfarb's and Canna-Pet's mark, either for commercial gain or with the intent to tarnish or disparage their mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site.

62. Ms. Brandon's conduct described herein was willful.

63. Ms. Brandon's wrongful registration has caused and continues to cause Mr. Goldfarb and Canna-Pet damages in an amount to be determined at trial. Under 15 U.S.C. § 1117(d), Mr. Goldfarb and Canna-Pet are entitled to recover the actual damages they have sustained, as well as Ms. Brandon's profits. In the alternative, at Mr. Goldfarb's and Canna-Pet's election, they are entitled to recover an amount of not less than $1,000 and not more than $100,000, as the Court considers just.

64. Mr. Goldfarb and Canna-Pet have no adequate remedy at law to remedy Ms. Brandon's wrongful conduct because their CANNA-PET trademark constitutes unique and valuable property that has no readily determinable market value; Ms. Brandon's registration of *cannaforpets.com* constitutes interference with Mr. Goldfarb's and Canna-Pet's goodwill and customer relations; and Ms. Brandon's wrongful conduct and the harm resulting therefrom is continuing. Mr. Goldfarb and Canna-Pet are entitled to injunctive relief pursuant to 15 U.S.C. §

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1116(a).

65. Mr. Goldfarb and Canna-Pet are also entitled to an award of their reasonable attorney's fees and litigation costs.

Count 6 – Unfair Competition under Washington Law
(Against All Third-Party Defendants)

66. Mr. Goldfarb and Canna-Pet restate their allegations set forth in Paragraphs 1-65 above.

67. Third-Party Defendants' fraudulent and deceptive letter sent to Nutra Connection with the intent to interfere with Canna-Pet's commerce with Nutra Connection constitutes an unfair method of competition and an unfair trade practice. As such, it is damaging to the public interest in violation of the Washington Consumer Protection/Unfair Business Practices Act, RCW 19.86.020.

68. The unfair methods of competition employed by Third-Party Defendants occur in trade or commerce and cause injury to Mr. Goldfarb's and Canna-Pet's business, including the loss of goodwill.

69. As a result of the unfair business practices employed by Third-Party Defendants, Mr. Goldfarb and Canna-Pet have been damaged in an amount to be proven at trial, and will be irreparably harmed if the wrongful conduct is allowed to proceed.

70. Pursuant to RCW 19.86.090, Mr. Goldfarb and Canna-Pet are entitled to their attorney's fees, exemplary damages, and an injunction restraining the unfair competition.

Count 7 – Libel
(Against All Third-Party Defendants)

71. Mr. Goldfarb and Canna-Pet restate their allegations set forth in Paragraphs 1-70 above.

72. Third-Party Defendants, through Greg Copas, sent a letter to third party Nutra Connection.

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73. The letter to Nutra Connection contained false statements concerning Mr. Goldfarb, Canna-Pet, and Canna-Pet's products. The letter falsely alleged that Canna-Pet's products are illegal, that the letter's author had contacted Mr. Goldfarb and he had failed to respond, and that the author enclosed "verified certificates of analysis" of Canna-Pet's products.

74. Third-Party Defendants sent the letter to Nutra Connection with the intent to damage Mr. Goldfarb and Canna-Pet's reputations, including Mr. Goldfarb and Canna-Pet's reputations for lawful conduct in their trade, business, and profession.

75. Third-Party Defendants' intent in sending the letter including false statements was malicious rather than negligent.

76. As a result of these false statements, Mr. Goldfarb and Canna-Pet have been damaged in an amount to be proven at trial, and will be irreparably harmed if the wrongful conduct of Third-Party Defendants is allowed to proceed.

77. Mr. Goldfarb and Canna-Pet are entitled to an injunction restraining Third-Party Defendants' libelous actions, their attorney's fees, and exemplary damages.

Count 8 – Civil Conspiracy
(Against All Third-Party Defendants)

78. Third-Party Defendant Greg Copas, and upon information and belief, all other Third-Party Defendants, agreed with one another to engage in the acts alleged in Counts 6 and Count 7 in violation of state statutory and common law. That agreement to accomplish an unlawful objective is a conspiracy. Mr. Goldfarb and Canna-Pet have suffered and will suffer actual damages as a result of the conspiracy. As such, Third-Party Defendants are jointly and separately liable for the harm they jointly and severally caused.

JURY DEMAND

79. Mr. Goldfarb and Canna-Pet respectfully demand a trial by jury on all claims, counterclaims, and third-party claims stated herein.

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PRAYER FOR RELIEF

WHEREFORE, Mr. Goldfarb and Canna-Pet respectfully pray for relief as follows:

1. That WFS Pharmagreen's claims for declaratory judgment be dismissed with prejudice, and that all relief it requests in its amended complaint be denied;

2. That the Court issue temporary, preliminary, and permanent injunctive relief against WFS Pharmagreen, Canna Companion, CC Products, Ms. Bandon, Mr. Copas, and Mr. Stewart (collectively, the "Counterclaim/Third-Party Defendants"), their officers, agents, representatives, servants, employees, attorneys, successors and assigns, and all others in active concert or participation with them that they be enjoined and restrained from:

a. Importing, distributing, advertising, marketing, or selling any pet supplement in the United States in connection with any trademark that is identical or confusingly similar to Mr. Goldfarb and Canna-Pet's CANNA-PET trademark, including an order for impoundment and destruction of any items the Counterclaim/Third-Party Defendants' possession or control bearing infringing trademarks (including but not limited to CANNA COMPANION) pursuant to 15 U.S.C. §§ 1116 and 1118;

b. Registering, maintaining a registration, or transferring to any party other than Mr. Goldfarb and Canna-Pet any domain name that is likely to cause confusion with Mr. Goldfarb's and Canna-Pet's CANNA-PET trademark (including, but not limited to, the *cannaforpets.com* domain name); and

c. Assisting, aiding or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (a) and (b) above;

d. Making false statements concerning Mr. Goldfarb and Canna-Pet.

3. That the Court enter an Order directing the Counterclaim/Third-Party Defendants to file with this Court and serve on Mr. Goldfarb's and Canna-Pet's attorneys within thirty days after service of an injunction, a report in writing, under oath, setting forth in detail the manner and

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form in which the Counterclaim/Third-Party Defendants have complied with the injunction;

4. That the Court determine that Mr. Goldfarb and/or Canna-Pet have the right to continue to register the CANNA-PET trademark, and that Canna Companion's petition to cancel that registration be dismissed with prejudice;

5. That the Court determine that Canna Companion has no right to register the CANNA COMPANION trademark, and that Canna-Pet's opposition to Canna Companion's application to register that trademark be sustained;

6. That the Court determine that Canna-Pet is the rightful owner of the CANNA-PET trademark registration (or, in the alternative, that Mr. Goldfarb is the rightful owner);

7. That the Court order Ms. Brandon to transfer the *cannaforpets.com* domain name to Canna-Pet;

8. That the Court enter an order against the Counterclaim/Third-Party Defendants awarding Mr. Goldfarb and Canna-Pet their actual damages measured by the Counterclaim/Third-Party Defendants' profits, and exemplary damages pursuant to 15 U.S.C. § 1117, 15 U.S.C. § 1125(d), and RCW 19.86.090 in amounts to be determined at trial;

9. That the Court enter an Order awarding Mr. Goldfarb and Canna-Pet their reasonable costs and attorney's fees;

10. That the Court enter an Order awarding Mr. Goldfarb and Canna-Pet their pre- and post-judgment interest;

11. That the Court determine that the Counterclaim/Third-Party Defendants injured Mr. Goldfarb and Canna-Pet intentionally and willfully;

12. That the Court find that the Counterclaim/Third-Party Defendants are jointly and severally liable to Mr. Goldfarb and Canna-Pet; and

13. That the Court grant such additional relief as it deems just and appropriate.

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Respectfully submitted this 17th day of November, 2016.

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Attorneys for Daniel K. Goldfarb and Canna-Pet, LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2016, I filed the above document by CM/ECF and served it by the method indicated below:

David K. Eckberg WSBA# 16273 Daniel Gandara WSBA# 8635 Vandeberg Gandara & Johnson, LLP 999 Third Avenue, Suite 3000 Seattle, WA 98104-4088 Attorneys for WFS Pharmagreen, Inc., Canna Companion, LLC; Canna Companion Products, Inc., Sarah Brandon, Greg Brandon, Robert Stewart, and Jane Doe Stewart	☐ U.S. Mail, Postage Prepaid ☐ Hand Delivered ☐ Overnight Mail ☐ Facsimile Transmission ☒ CM/ECF ☐ E-mail

Dated: November 17, 2016

By /s/ Gideon Dionne
Gideon Dionne

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